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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION EIGHT

Estate of CORDELL JENKINS, Deceased.	B216992
H.J. BRYANT et al.,	(Los Angeles County
Petitioners and Respondents,	Super. Ct. No. BP097863)
v.	
T.L. JENKINS,	
Objector and Appellant.	

APPEAL from a judgment of the Superior Court of Los Angeles County.  
Mitchell L. Beckloff, Judge. Affirmed.

George Holloway for Objector and Appellant.

Hoffman Sabban & Watenmaker, Kenneth S. Wolf for Petitioner and Respondent  
H.J. Bryant.

Parcells Law Firm and Dayton B. Parcells III, for Petitioners and Respondents.

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## INTRODUCTION

This dispute regarding the estate of Cordell Jenkins is before us for the second time. The appellant is Cordell's son, T.L. Jenkins. Respondents are Cordell's daughter, Nicey Jenkins; grandchildren, Robert Jenkins, Jr., Kimberly Jenkins and Sharon White; and the court-appointed trustee of Cordell's trust, H.J. Bryant.<sup>1</sup> It involves two cases found by the probate court to be related: (1) the "Conservatorship Case" (case No. BP086860) in which appellant sought to be appointed conservator of Cordell's person and estate; and (2) the "Successor-Trustee Case" (case No. BP097863) in which another of Cordell's sons, Robert Jenkins, Sr. (now deceased), and Sharon sought to be appointed successor trustees of Cordell's living trust. In a prior opinion, we affirmed an order imposing nonmonetary discovery sanctions against appellant in the Conservatorship Case. (*In re Conservatorship and Estate of Jenkins* (Dec. 15, 2008, B199837 [nonpub. opn.] (*Jenkins I.*)) The current appeal is from an order in the Successor-Trustee Case, granting the trustee's Probate Code section 850 petition and directing appellant to deliver certain real and personal property to the trustee.<sup>2</sup> As we understand appellant's contention, it is that the probate court erred in granting the petition without allowing appellant to present evidence in opposition because of the discovery sanctions. We affirm the order.<sup>3</sup>

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<sup>1</sup> Because many of the parties have the same last name, we refer to them by their first names. We refer to Robert, Jr., Nicey, Kimberly, Sharon and Bryant collectively as respondents. We refer to H.J. Bryant as Bryant or the trustee.

<sup>2</sup> Probate Code section 850 allows a person to request the court make certain orders, including conveying property in compliance with the terms of a decedent's wishes after their death.

<sup>3</sup> Respondents have requested that the record be augmented with (1) the Petition for Order Directing T.L. Jenkins to Deliver Trust Property to Respondent per Probate Code section 850 et seq. (section 850 petition); (2) appellant's objections to the section 850 petition; and (3) the trustee's response to appellant's objections. Appellant opposes augmentation on the grounds that these "are not the operative pleadings at issue in this

## FACTUAL AND PROCEDURAL BACKGROUND

### A. *The Trust*

In February 2004, Cordell created the Cordell Jenkins Family Trust (the trust) in which she named herself as trustee; Robert, Sr., and Sharon were named successor trustees. Simultaneously, Cordell executed a will that bequeathed her entire estate to the trust and named Robert, Sr., and Sharon executors. The assets transferred into the trust included Cordell's interest in certain real properties she held in joint tenancy with several of her children, including one she held in joint tenancy with appellant (the 49th Street property). The trust directed that, upon Cordell's death, Cordell's interest in the 49th Street property shall be distributed to "my sons Robert . . . and Alfred. . . . My son T.L. Jenkins [appellant] already has a 1/2 . . . interest in the 49th Street property." Cordell died on March 1, 2008.

### B. *The Conservatorship Case and the Successor-Trustee Case*

In July 2004, appellant and Alfred initiated the Conservatorship Case with a petition to have appellant appointed conservator of Cordell's person and estate because Cordell was suffering from Alzheimer's dementia and could no longer manage her own affairs. Robert, Sr., opposed appellant's appointment and asked instead that he and Sharon be appointed as Cordell's conservators. In March 2005, the probate court appointed Bryant (a professional conservator) and Nicey (with whom Cordell had been living) conservators of Cordell's estate and person, respectively.

In April 2006, Robert, Sr., and Sharon initiated the Successor-Trustee case with a petition to be appointed successor trustees of the trust. The Conservatorship and

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appeal . . . ." (Underscoring omitted.) Inasmuch as the appeal is from the order granting the section 850 petition, appellant's opposition is not well-taken and we hereby grant the request to augment. We also grant appellant's motion for judicial notice of the opinion in *Jenkins I*. And on our own motion, we take judicial notice of the appellate record in *Jenkins I* and the superior court files in both the Conservatorship and Successor-Trustee Cases. (Evid. Code, § 452, subd. (d).)

Successor-Trustee Cases were deemed related.<sup>4</sup> Bryant was appointed temporary trustee in July 2006.

While the competing petitions to name a successor trustee were pending in both the Conservatorship and Successor-Trustee Cases, appellant filed a petition in the Conservatorship Case to, among other things, revoke the trust; the gravamen of the motion was that Cordell lacked testamentary capacity when she created the trust.

***C. The April 6 Order in the Conservatorship Case***

In the Conservatorship Case, respondents propounded a demand for production of documents on appellant, related to the allegation that appellant had taken money from Cordell without her knowledge or consent. First, the probate court granted respondents' motion to compel further response and production of documents. Then, on April 6, 2007, the trial court granted respondent's motion for monetary and nonmonetary sanctions, including terminating sanctions, for appellant's failure to comply with the April 6 order. In addition to striking appellant's pleadings in the Conservatorship Case, the April 6 order states: "[Respondents'] request for an order imposing evidentiary and issue sanctions against [appellant] is granted. It is hereby ordered that it is taken as established that: (a) [Appellant] took at least \$265,000 in cash from Cordell Jenkins without her knowledge and consent; and (b) any ownership interest [appellant] has in any real estate was obtained with monies that he took from Cordell Jenkins without her knowledge and

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<sup>4</sup> At the time, former rule 804(d) of the California Rules of Court (rule 804) governed the determination of related cases. Rule 804 provided: "(b) . . . An action or proceeding is 'related' to another when both: [¶] (1) involve the same parties and are based on the same or similar claims; or [¶] (2) involve the same property, transaction, or event; or [¶] (3) involve substantially the same facts and the same questions of law." An order declaring cases related cases under rule 804 must be distinguished from an order consolidating cases under Code of Civil Procedure section 1048 and former rule 367 (current rule 3.350). After cases have been consolidated, subsequent pleadings are filed only in the lead case, but bear the case number of all of the consolidated cases. (See former rule 367(c), (d).) Here, there was no formal motion to consolidate or consolidation order and subsequent pleadings were captioned with one or the other case number. Rule 804 is carried forward in current rule 3.300.

consent. [Appellant] is prohibited from introducing anything in evidence related to these designated matters.”

Although the probate court granted respondent’s motion for terminating sanctions in the Conservatorship Case, it expressly denied similar sanctions in the Successor-Trustee Case reasoning that the discovery had been sought only in the Conservatorship Case.<sup>5</sup>

***D. The April 23/August 8 Order***

Various matters in both the Conservatorship and Successor-Trustee Cases were set for hearing on April 23, 2007. Appellant and his counsel did not appear, although appellant received notice of the proceedings. Bryant, Nicey, Robert, Sr., Sharon, Alfred, and their counsel were present, as was Cordell’s appointed counsel.

The disposition of each matter that came on for hearing that day is detailed in the “Order Per Stipulations Made at Commencement of Trial,” which was filed on August 8, 2007 (the April 23 order). It described the disposition of each of the matters that were calendared for that day, including the following four matters in the Conservatorship Case: (1) Bryant’s petition to be confirmed as successor trustee; (2) appellant’s petition to revoke the will and trust; (3) the trustee’s statement in lieu of accounting; and (4) the trustee’s section 850 petition regarding real property owned by Cordell and Sharon as joint tenants. The only matter calendared for hearing in the Successor-Trustee Case was Robert, Sr., and Sharon’s petition to be appointed successor trustees.

Under the subheading “Trial and Pleadings,” the order states that the April 6 order struck all of appellant’s pleadings in the Conservatorship Case, including his petition to revoke Cordell’s will and trust; vacated the April 23 trial date set for that petition; and granted evidentiary and issue preclusion sanctions. Under the subheading “Stipulations,” the order states counsel for respondents entered into a stipulation which was approved on the record by the parties. Under the subheading “Court Findings,” the order states: “The

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<sup>5</sup> Under rule 804, trial courts had discretion to make joint discovery orders in related cases. Nothing in the record suggests the probate court ordered joint discovery in the Conservatorship and Successor-Trustee Cases.

following factual stipulations contained in the Stipulation are hereby made findings of this Court: [¶] . . . [¶] b. [Appellant’s petition to revoke the trust] has been stricken by the Court.” Under the subheading, “Court Orders,” the order states: “4. Claims Against [Appellant]: [¶] Based upon the [April 6 order becoming] final, Bryant shall take such action as may be reasonable to seek enforcement of the sanctions set forth in [the April 6 order], including the following: [¶] a. A Partition action to cause the sale of the 49th Street Property; [¶] b. A [Probate Code] Section 850 Petition to seek recovery of [appellant’s] interest in the 49th Street Property and to recover assets in the amount of at least \$265,000 and other real estate interests in [appellant’s] name deemed to have been taken from Cordell without her knowledge or consent.”

The April 23 order was filed in both the Conservatorship Case and the Successor-Trustee Case on August 8, 2007. In *Jenkins I*, filed in December 2008, we affirmed the April 6 order.

***E. The Section 850 Petition***

On January 21, 2009, in the Successor-Trustee Case, the trustee filed a “Petition for Order Directing [Appellant] to Deliver Trust Property to [Bryant],” i.e., the section 850 petition. The petition described the procedural history of the litigation, including the April 6 and April 23 orders. It sought an order directing appellant to execute a deed transferring each and every parcel of real property owned by him or his agent to the trustee, including specifically the 49th Street property and a property on West 113th Street (the 113th Street property); the petition also sought an order directing appellant to transfer \$265,000, plus interest to the trustee.

Appellant objected to the section 850 petition on a number of grounds. The trustee filed objections and a request to strike appellant’s objections. The trustee argued that the April 6 order, affirmed on appeal in *Jenkins I*, conclusively established that appellant took at least \$265,000 from Cordell without her knowledge and consent; and that any ownership interest appellant has in any real property was obtained with money taken from Cordell without her knowledge or consent. Further, the trustee argued that the

April 6 order precluded appellant “from opposing these claims and prohibited [him] from introducing anything into evidence relating to these matters.” (Underscoring omitted.)

***F. The June 29 Order***

The section 850 petition came on for trial on May 21, 2009. The trustee explained that the April 6 order prohibited appellant from opposing the claim that “any ownership interest [appellant] has in any real estate was obtained with monies that he took from Cordell Jenkins without her knowledge and consent;” the April 23 order directed the trustee to enforce the April 6 order by bringing a section 850 petition to recover “real estate interests in [appellant’s] name deemed to have been taken from Cordell without her knowledge and consent;” the section 850 petition was intended to comply with the April 23 order. Called as a witness by the trustee pursuant to Evidence Code section 776, appellant testified that he owned an interest in the 49th Street property and the 113th Street property on April 6, 2007; appellant still had an interest in the 49th Street property, but had transferred his interest in the 113th Street property to his wife in February 2009. Appellant could not recall whether he was aware that the trustee was making a claim on the 113th Street property at the time he transferred his interest in it to his wife. Based on the April 6 order, the probate court would not allow appellant to introduce any evidence of the time or manner in which he acquired those two properties. After recounting the procedural history of both cases in detail, the probate court granted the petition.

In a written order filed on June 29, 2009 (the June 29 order), the probate court explained that the April 6 and the April 23 orders constitute law of the case in connection with the section 850 petition. It ordered appellant to, within 14 days: (1) deliver to the trustee the sum of \$265,000, plus interest at the rate of 10 percent per annum from April 6, 2007, until paid in full; (2) execute and deliver to the trustee deeds in favor of the trustee with respect to the 49th Street property, as well as any and all real property standing in appellant’s name as of April 6, 2007, including 113th Street. Notice of Entry of Order was served and filed on July 2, 2009.

Appellant filed a timely notice of appeal.<sup>6</sup>

On August 5, 2009, this court denied appellant's petition for a writ of supersedeas staying the June 29 order.<sup>7</sup>

## DISCUSSION

### A. *Appellant Was Not Denied Due Process*

Appellant's first contention is that he was denied due process because the probate court did not allow him to present evidence in opposition to the section 850 petition, including that appellant did not take \$265,000 from Cordell without her knowledge or consent and that his interest in the 49th Street and 113th Street properties was lawfully acquired. As we understand his argument, it is that the probate court could not rely on *Jenkins I* to bring the nonmonetary discovery sanctions imposed in the Conservatorship Case within the law of the case doctrine because *Jenkins I* was unpublished. We find no error.

California Rules of Court, rule 8.1115(a) provides: "Except as provided in (b), an opinion of a California Court of Appeal . . . that is not certified for publication or ordered published must not be cited or relied on by a court or a party in any other action." The exceptions set forth in rule 8.1115(b) include "(1) When the opinion is relevant under the

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<sup>6</sup> Notwithstanding that the notice of appeal was filed on June 9, 2009, after the trial court announced its ruling, but before the order was entered, we treat it as timely. (Cal. Rules of Court, rule 8.104(e)(2) ["The reviewing court may treat a notice of appeal filed after the superior court has announced its intended ruling, but before it has rendered judgment, as filed immediately after entry of judgment"].)

<sup>7</sup> Appellant devotes a part of his opening brief to the contention that the probate court erred in refusing to order the clerk of the superior court to accept deposit of the executed deeds, which would have allowed appellant to meet the conditions for a stay of the order pending appeal under Code of Civil Procedure section 917.3 (notice of appeal does not stay a trial court order directing the execution of an instrument "unless the instrument or instruments are executed and deposited in the office of the clerk of the court where the original judgment or order is entered to abide the order of the reviewing court"). (But see, Code Civ. Proc., § 917.6 [if the order directs performance of multiple acts specified in sections 917.1 through 917.5, enforcement is stayed only if appellant complies with security provisions of each applicable statute].) Inasmuch as we have affirmed the order appealed from, the issue of a stay is now moot.



doctrines of law of the case, res judicata, or collateral estoppel[.]” Here, the opinion in *Jenkins I* was relevant under the collateral estoppel doctrine.<sup>8</sup>

Collateral estoppel precludes a party from relitigating in a second proceeding the matters litigated and determined in a prior proceeding. The requirements for invoking collateral estoppel are: (1) the issue sought to be precluded from relitigation must be identical to that decided in a former proceeding; (2) this issue must have been actually litigated in the former proceeding; (3) this issue must have been necessarily decided in the former proceeding; (4) the decision in the former proceeding must be final and on the merits; and (5) the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding. (*Mills v. U.S. Bank* (2008) 166 Cal.App.4th 871, 895.) A judgment of dismissal as a discovery sanction is a judgment on the merits for purposes of collateral estoppel. (Cf. *Kahn v. Kahn* (1977) 68 Cal.App.3d 372, 383 [judgment of dismissal obtained as a discovery sanction is a judgment on the merits for purposes of res judicata]; *Mills, supra*, at p. 895 [collateral estoppel (i.e., issue preclusion) is one aspect of the res judicata doctrine]; see also 7 Witkin, Cal. Procedure (5th ed. 2008) Judgment, § 380, p. 1009, citing *Kahn*.)

These requirements for collateral estoppels are met here. The issues sought to be precluded from relitigation in the section 850 petition in the Successor-Trustee Case – that the trust has a claim to \$265,000, which appellant took from Cordell without her knowledge or consent, and to appellant’s ownership interest in the 49th Street and

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<sup>8</sup> “Under the law of the case doctrine, ‘the decision of an appellate court, stating a rule of law necessary to the decision of the case, conclusively establishes that rule and makes it determinative of the rights of the same parties in any subsequent retrial or appeal in the same case.’” [Citation.]” (*Yu v. Signet Bank/Virginia* (2002) 103 Cal.App.4th 298, 309.) Although the trial court stated that the April 6 and April 23 orders constituted law of the case, the section 850 petition was not a retrial of the matters resolved in *Jenkins I*, and the law of the case doctrine was therefore inapplicable. But we review the correctness of a challenged ruling, not the analysis used to reach it and a trial court’s reliance on erroneous reasoning is no basis for reversal if the decision is correct. (*In re Baraka H.* (1992) 6 Cal.App.4th 1039, 1045.) Here, as we explain, the ruling was correct under the collateral estoppel doctrine.

113th Street properties, which he obtained with monies he took from Cordell without her knowledge or consent – are identical to the issues litigated in the Conservatorship Case.

These issues were decided by the April 6 and April 23 orders. The April 6 order established: (a) that appellant took at least \$265,000 from Cordell without her knowledge and consent; (b) that any ownership interest appellant had in any real estate on the date the order was made was obtained with monies he took from Cordell without her knowledge and consent; and (c) precluded appellant from opposing these claims, or offering any evidence related to them. Further, the April 23 order (filed in both the Conservatorship and the Successor-Trustee Cases) directed the trustee to enforce the April 6 order by filing a section 850 petition to recover from appellant (a) \$265,000 in cash, (b) appellant's interest in the 49th Street property, and (c) appellant's interest in other real estate deemed to have been taken from Cordell without her knowledge or consent.

These orders constituted a final judgment on the merits. Finally, appellant was a party in the Conservatorship Case. Accordingly, appellant was collaterally estopped from relitigating in the Successor-Trustee Case issues established by the April 6 and April 23 orders.

***B. The Probate Court Properly Applied the April 6 and April 23 Rulings to the Trial of the Section 850 Petition***

Appellant's second contention is that the June 29 order was void. In addition to restating his argument that the probate court improperly relied on *Jenkins I* because it was unpublished, appellant argues that the probate court "acted in excess of jurisdiction in transferring discovery sanctions from the Conservatorship case to the unrelated [section 850 petition trial], all of which is not part of the Discovery Act."

As we have already explained, the April 6 and April 23 orders constituted a judgment on the merits of the Conservatorship Case and, under the collateral estoppel doctrine, appellant was precluded from offering evidence to disprove the issues established as a result of those orders.

## **DISPOSITION**

The judgment is affirmed. Respondents are awarded costs on appeal.

BIGELOW, P. J.

We concur:

FLIER, J.

GRIMES, J.